

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

NERISSA EUBANKS,	:	APPEAL NO. C-110406
	:	TRIAL NO. 11CV-06592
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CINCINNATI INSURANCE	:	
COMPANY,	:	
	:	
and	:	
	:	
THOMPSON HALL AND JORDAN	:	
FUNERAL HOME,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Raising two assignments of error, plaintiff-appellant Nerissa Eubanks appeals pro se from the entry of the Hamilton County Municipal Court adopting the magistrate's decision entering judgment for defendants-appellees, the Cincinnati Insurance Company and the Thompson Hall and Jordan Funeral Home ("Thompson Hall"). Eubanks had alleged that she was the proper beneficiary of a \$10,000 life-insurance policy issued by Cincinnati Insurance to her friend Samuel Jackson.

In his August 2004 application for the insurance policy, Jackson had named Thompson Hall as the primary beneficiary of the policy and had named Eubanks as the contingent beneficiary. In November 2005, however, Jackson transferred ownership of the policy to Thompson Hall. He maintained the funeral home as the primary beneficiary

but deleted Eubanks as the contingent beneficiary. When Jackson died in March 2009, Cincinnati Insurance paid the full death benefit in accordance with the policy and with Thompson Hall's irrevocable assignment to a third party. Eubanks brought suit.

The trial court referred the case to a magistrate. Thompson Hall moved for judgment on the pleadings under Civ.R. 12(C). After discovery was had, Cincinnati Insurance moved for summary judgment. Following oral argument on the defendants' motions, the magistrate reviewed the record and issued a written decision granting the appellees' motions.

In accordance with Civ.R. 53(D)(3), the magistrate's decision contained a conspicuous warning that the failure to file a timely and specific objection to the trial court would prevent Eubanks from assigning any error, save plain error, on appeal from the trial court's adoption of the magistrate's decision. To avoid the waste of the court's and the parties' time and resources, alleged errors must be addressed at the earliest moment in a lawsuit. This "embodies the long-recognized principle that the failure to draw the trial court's attention to possible error, by objection or otherwise, when the error could have been corrected, results in a waiver of the issue for purposes of appeal." *In re Etter*, 134 Ohio App.3d 484, 492, 731 N.E.2d 694 (1st Dist.1998). Thus, errors that could have been brought to the attention of the trial court before it entered judgment, but that were not, are waived.

Despite the written warning at the conclusion of the magistrate's decision, Eubanks did not file written objections with the trial court. *See* Civ.R. 53(D)(3)(b). Neither did she file with the trial court a transcript of the proceedings had before the magistrate. That transcript was filed for the first time in this court on November 1, 2011. *See State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 654 N.E.2d 1254 (1995) (an appellate court is precluded from considering the transcript of a

magistrate's hearing filed for the first time with the appellate record). *See also State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978). Thus the limits of our review are narrowly circumscribed. Any error, factual or legal, in the magistrate's decision is waived, except plain error.

The plain-error doctrine is not favored in civil proceedings and "may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 70 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus. Plain error is to be invoked sparingly and is not warranted by the failure to file an objection.

Although Eubanks has proceeded pro se, she is subject to the same rules and procedures as those litigants who retain counsel and "must accept the result of [her] own mistakes and errors." *Meyers v. First Natl. Bank*, 3 Ohio App.3d 209, 210, 444 N.E.2d 412 (1st Dist.1981). As the Ohio Supreme Court has noted, the "failure to follow procedural rules can result in forfeiture of rights." *Goldfuss* at 122.

When, as here, a party fails to file written objections, the trial court "may adopt [the] magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." Civ.R. 53(D)(4)(c). From the face of the magistrate's decision in this case, and the documents on which it is based, we cannot say that the magistrate or the trial court erred in entering judgment against Eubanks.

By demonstrating that Eubanks had never been the primary beneficiary of the policy, Cincinnati Insurance discharged its initial burden to identify the absence of genuine issues of material fact as to an essential element of her claim. Eubanks was not able to set forth specific facts, by the means listed in Civ.R. 56(C) and 56(E), showing that

triable issues of fact existed. *See Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). Similarly, Thompson Hall was entitled to judgment on the pleadings which established beyond doubt that Eubanks could prove no set of facts to support her claim for relief as the proper beneficiary of Jackson's insurance policy. *See State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 664 N.E.2d 931 (1996).

The trial court's decision to adopt the magistrate's ruling was not error, much less plain error that seriously affected the basic fairness, integrity, or public reputation of the judicial process. The assignments of error are overruled.

Therefore, the trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on February 10, 2012

per order of the court _____.
Presiding Judge